IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.550 OF 2005
WITH
CIVIL APPLICATION NO.649 OF 2005

Smt.Shalinibai Shivaji Gaikwad & Ors. ..Appellants.

V/s.

Shri Rajkumar S. Gaikwad & Ors. ..Respondents.

Mr.Nitin Jamdar for appellants.

Mr.A.B.Avhad for respondent No.1.

Mr.R.S.Deshpande for respondent No.4.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 7, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents on record including additional documents placed on record before this court to support the ground No.13, which documents were not part of the record before the trial Court. Even if the appellants' case was to be accepted as it is, I see no propriety in interfering with the interlocutory order passed by the lower Court, especially in view of the finding that the construction is almost completed. In equity, it is not possible to grant any relief to the appellants in the fact situation of this case. In the event the

appellant succeeds in establishing her claim before the trial Court, it will be open to the trial Court to grant such relief, as may be advised and prayed by the appellants. Suffice it to observe that no case for interference in the appeal from order is made out. It is however, clarified that this order is not an expression of opinion on merits of the controversy involved in the main proceedings. The suit will have to be decided on the basis of evidence brought on record in accordance with the law. All question in the suit are left open.

2. Accordingly, this appeal is dismissed with direction to the trial Court to dispose of the suit expeditiously, preferably by end of December, 2007. This observation is made on the basis of assurance given by the counsel appearing for the parties that they shall extend full cooperation to the trial Court for early disposal of the suit.

3. Civil application disposed of accordingly.